



South Coast Air Quality Management District

Contract No. ***
SOON Program Off-Road Vehicles

This Contract consists of ** pages.

1. **PARTIES** - The parties to this Contract are the South Coast Air Quality Management District (referred to here as "AQMD") whose address is 21865 Copley Drive, Diamond Bar, California 91765-4178, and *** (referred to here as "CONTRACTOR") whose address is ***.
2. **RECITALS**
 - A. AQMD is the local agency with primary responsibility for regulating stationary source air pollution within the geographical boundaries of the South Coast Air Quality Management District in the State of California. AQMD is authorized to enter into this Contract under California Health and Safety Code Section 40489. Through this Surplus Off-road Opt-in for NOx (SOON) Program funded Contract the parties desire to fund the incremental costs of certain cleaner than required equipment in order to generate cost-effective and surplus air emission reductions within the geographical boundaries of the South Coast Air Quality Management District. Accordingly, AQMD desires to contract with CONTRACTOR for the project described in Attachment 1 - Statement of Work, attached hereto and made a part hereof.
 - B. CONTRACTOR is authorized to do business in the State of California and attests that it is in good tax standing with the California Franchise Tax Board.
 - C. All parties to this Contract have had the opportunity to have this Contract reviewed by their attorney.
 - D. CONTRACTOR agrees to obtain and maintain the required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees.
 - E. CONTRACTOR agrees that, in accordance with the California Air Resources Board's (CARB) Carl Moyer Program Guidelines and title 13, California Code of Regulations (CCR), section 2449 et sec. both the AQMD and CARB may monitor and enforce the terms of this Contract. Accordingly, CONTRACTOR acknowledges that both the AQMD and CARB are beneficiaries of the work funded hereunder. CONTRACTOR has agreed to perform under this Contract to generate surplus emissions reductions.
3. **PERFORMANCE REQUIREMENTS**
 - A. CONTRACTOR warrants that it holds all necessary and required licenses and permits to perform this project. CONTRACTOR further agrees to immediately notify AQMD in writing of any change in its licensing status.
 - B. CONTRACTOR shall submit reports to AQMD as outlined in Attachment 1 - Statement of Work. All reports shall be submitted in an environmentally friendly format: recycled paper; stapled, not bound; black and white, double-sided print; and no three-ring, spiral, or plastic binders or cardstock covers. AQMD reserves the right to review, comment, and request changes to any report produced as a result of this Contract.
 - C. CONTRACTOR shall perform all tasks set forth in Attachment 1 - Statement of Work, and shall not engage, during the term of this Contract, in any performance of work that is in direct or indirect conflict with duties and responsibilities set forth in Attachment 1 - Statement of Work.

- D. CONTRACTOR shall ensure, through its contracts with any subcontractor(s) that employees and agents performing under this Contract shall abide by the requirements set forth in this Clause.
4. TERM - The term of this Contract is from the date of execution by both parties to ***, unless further extended by amendment of this Contract in writing. No work shall commence until this Contract is fully executed by all parties. Notwithstanding the above end dates, the Contract term shall encompass both the project completion and project implementation/life periods, whichever is longer, to ensure that the AQMD and CARB can fully enforce the Contract terms during the life of this SOON Program-funded project.
- A. Project Completion – Project completion is the time frame starting with the date of contract execution by both parties to the date of project completion, i.e., the date the project becomes operational. This is the time period when an engine, vehicle or piece of equipment is ordered, delivered and installed.
- B. Project Implementation/Life - The project implementation time frame equals the project life. Project life is the number of years that a SOON Program project obtains or is claimed to obtain surplus emissions reductions while operating in California. SOON Program Surplus emission reductions are reductions that are extra. That is, the reductions meet the requirements of the SOON Program regulation (title 13, CCR Section 2449.3) which ensures these reductions are surplus to those that would otherwise be achieved through implementation of the “Regulation for In-Use Off-Road Diesel Vehicles” (title 13, CCR, sections 2449, 2449.1, and 2449.2). The project implementation or project life equals the period of time during which CONTRACTOR is required to operate and maintain their SOON Program-funded engine, vehicle or equipment according to the terms of this Contract.
5. TIME PERIOD FOR CONTRACT EXECUTION - This Contract must be signed by the CONTRACTOR and received by AQMD within sixty (60) days from the receipt of the Contract by the CONTRACTOR, otherwise this Contract shall be deemed null and void regardless of whether it was executed by CONTRACTOR. Time is of the essence in executing this Contract.
6. TERMINATION
- A. If the CONTRACTOR fails to comply with any term or condition of this Contract, or fails to perform work in the manner agreed upon by the parties, including, but not limited to, the requirements of Attachment 1 - Statement of Work, this failure shall constitute a material breach of this Contract. The AQMD shall either notify the CONTRACTOR that it must timely cure this breach or provide written notification of AQMD's intention to terminate this Contract and invoke the penalties under Clause 7, if applicable. The AQMD reserves all rights under law and equity to enforce this Contract or to recover damages.
- B. Notwithstanding sub-Clause 6A, this Contract may be terminated without penalty prior to completion of the Contract term if the vehicles or equipment become inoperable through mechanical failure of components or systems and cannot be repaired or replaced and such failure is not caused by CONTRACTOR's negligence, misuse or malfeasance. CONTRACTOR shall submit written documentation supporting any basis for early termination under this sub-Clause for the approval of AQMD.

- C. AQMD reserves the right to terminate this Contract, in whole or in part, with or without cause, upon thirty (30) days written notice. Once such notice has been given, CONTRACTOR shall, except as otherwise directed by AQMD, discontinue any work being performed under this Contract and cancel any of CONTRACTOR'S orders for materials, facilities, and supplies in connection with such work, and shall use its best efforts to procure termination of existing subcontracts upon terms satisfactory to the AQMD. Thereafter, CONTRACTOR shall perform only such services as may be necessary to preserve and protect any work already in progress and to dispose of any property as requested by AQMD.
 - D. CONTRACTOR shall be paid in accordance with this Contract for all work performed before the effective date of termination under sub-Clause 6C. Before expiration of the thirty (30) days written notice in the manner specified in this Contract, CONTRACTOR shall promptly deliver to AQMD all copies of documentation and other information and data prepared or developed by CONTRACTOR under this Contract with the exception of a record copy of such materials, which may be retained by CONTRACTOR.
7. STIPULATED PENALTIES - CONTRACTOR is obligated to acquire and operate subject engines, equipment and/or vehicles as well as provide reports to AQMD throughout the term of this Contract. Should CONTRACTOR desire to terminate this Contract in whole or in part prior to the end date for reasons other than those stated in sub-Clause 6B, CONTRACTOR shall reimburse AQMD for a prorated share of the funds provided under this Contract as determined by AQMD.
8. INSURANCE
- A. CONTRACTOR shall furnish evidence to AQMD of workers' compensation insurance for each of its employees, in accordance with either California or other states' applicable statutory requirements prior to commencement of any work on this Contract.
 - B. CONTRACTOR shall furnish evidence to AQMD of general liability insurance with a limit of at least \$1,000,000 per occurrence, and \$2,000,000 in a general aggregate prior to commencement of any work on this Contract. AQMD shall be named as an additional insured on any such liability policy, and thirty (30) days written notice prior to cancellation of any such insurance shall be given by CONTRACTOR to AQMD.
 - C. CONTRACTOR shall furnish evidence to AQMD of automobile liability insurance with limits of at least \$100,000 per person and \$300,000 per accident for bodily injuries, and \$50,000 in property damage, or \$1,000,000 combined single limit for bodily injury or property damage, prior to commencement of any work on this Contract. AQMD shall be named as an additional insured on any such liability policy, and thirty (30) days written notice prior to cancellation of any such insurance shall be given by CONTRACTOR to AQMD.
 - D. If CONTRACTOR fails to maintain the required insurance coverage set forth above, AQMD reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to CONTRACTOR or terminate this Contract for breach.
 - E. All insurance certificates should be mailed to: AQMD Risk Management, 21865 Copley Drive, Diamond Bar, CA 91765-4182. **The AQMD Contract Number must be included on the face of the certificate.**
 - F. By execution of this Contract, CONTRACTOR agrees to maintain the above required insurance as well as property insurance with sufficient limits to cover the loss of the engines, vehicles and/or equipment funded under this Contract. CONTRACTOR must provide updates on the insurance

coverage throughout the term of the Contract to ensure that there is no break in coverage during the period of Contract performance. Failure to provide evidence of current coverage shall be grounds for termination for breach of Contract.

G. CONTRACTOR agrees to flow the insurance requirements set forth above to all subcontractors.

9. INDEMNIFICATION - CONTRACTOR agrees to hold harmless, defend and indemnify AQMD, its officers, employees, agents, representatives, and successors-in-interest against any and all loss, damage, costs, lawsuits, demands, judgments, legal fees, or any other expenses incurred or required to be paid by AQMD, its officers, employees, agents, representatives, or successors-in-interest arising from or related to any injury to persons or damage to property caused directly or indirectly, in whole or in part, by any willful or negligent act or omission of CONTRACTOR, its employees, subcontractors, agents or representatives in the performance of this Contract.

10. USE OF VEHICLE AND EQUIPMENT

- A. CONTRACTOR shall accrue at least 75% of each vehicle's annual mileage or engine hours of operation within the geographical boundaries of the South Coast Air Quality Management District. Information included in the annual reports required under this Contract will be used to verify this usage.
- B. CONTRACTOR is prohibited from removing the vehicles or equipment from service in California during the term of this Contract, unless the vehicles or equipment become inoperable through mechanical failure of components or systems, and cannot be repaired or replaced, and such failure is not caused by CONTRACTOR'S negligence, misuse, or malfeasance.

11. COMPLIANCE WITH CARL MOYER PROGRAM GUIDELINES – CONTRACTOR warrants that the project upon which this Contract is based complies with all the Carl Moyer Program guidelines, including but not limited to the following:

- A. The project complies with the requirements of the SOON Program regulation (title 13, CCR Section 2449.3), and is not required by any other local, state and/or federal rule, regulation or MOU currently in effect.
- B. The low emissions technology has been certified or verified by CARB and meets the current NOx, PM and/or ROG requirements. If the low emissions technology is not certified or verified it may be approved based on a CARB case-by-case evaluation. When approved by a CARB case-by-case evaluation, the method for emissions verification must be included as part of the Contract in Attachment 1 – Statement of Work.
- C. Rights to the emission reductions must not be claimed by any participant as emission reduction credits or in an Averaging Banking and Trading Program. In addition, rights to the emission reductions may not be claimed by the engine or equipment manufacturer in any flexibility or "early introduction" incentive program.
- D. The new engine/equipment/vehicle must not have been purchased (i.e., paid for) prior to the effective date of the Contract. Note: CONTRACTOR is advised that pursuant to AQMD policy, the engine, vehicle and/or equipment must not have been ordered prior to the date of the AQMD Governing Board approval of the Contract.
- E. For re-powers, the existing (old) engine must be destroyed and rendered useless. There must be no cannibalization of parts from the old engine. Engines must have a complete and fully visible and

legible engine serial number in order to be eligible for an engine re-power. The destruction of the engine must be documented by the AQMD seeing the destroyed engine or the receipt from the qualified vehicle salvage yard. Engines without a visible and legible serial number may be re-powered if AQMD staff stamp the engine block with the Carl Moyer Program project number and the AQMD staff is present to personally verify engine removal from the project vehicle or equipment and the subsequent engine destruction.

- F. The engines, vehicles and/or equipment funded under this Contract must remain in service for the project life and operate within the geographical boundaries of the South Coast Air Quality Management District for the minimum usage specified in this Contract.

12. INCORPORATION OF CARL MOYER PROGRAM APPLICATION – CONTRACTOR'S application for the project funded under this Contract is incorporated herein by this reference and made a part of this Contract.

13. MAINTENANCE OF VEHICLES, ENGINES AND EQUIPMENT - CONTRACTOR shall maintain the engine, vehicle or equipment funded under this Contract in accordance with the manufacturer's specifications for the life of the project. CONTRACTOR acknowledges that no tampering with the engine, vehicle, or equipment is permitted. CONTRACTOR shall be responsible for maintaining a working hour meter or other approved measuring device or method to track vehicle usage and demonstrate that the vehicle is operated according to the parameters used to calculate emissions reductions and cost effectiveness. If the hour meter/usage device fails, the CONTRACTOR remains responsible for validating any hours not recorded by the hour meter/usage device. The CONTRACTOR must either repair or replace the non-operating meter/device or provide other documentation of equipment operating hours acceptable to AQMD.

14. ON-SITE INSPECTIONS - AQMD, CARB, or their designee(s) shall have the right to inspect the vehicles, engine(s) and/or equipment and associated records during the term of this Contract.

15. INSPECTIONS

- A. A Pre-Inspection shall be conducted by the AQMD on **all** equipment/vehicles/engines prior to any work commencing to implement this Contract. AQMD will verify that all requirements of the Carl Moyer Program regarding eligibility of existing equipment/vehicles/engines are met. This includes documentation of the type of equipment/vehicles/engines, operational condition, mileage, vehicle and engine identification. This Contract may be modified or terminated based upon the results of the Pre-Inspection should the AQMD determine that: the equipment is non-operational; does not match the information submitted for analysis (i.e. vehicle make, model, model-year, engine type, horsepower, model year, etc.); or other factors exist that would not result in the calculated real, quantifiable and surplus emission reductions. For fleets owned or operated by public agencies, AQMD may conduct the Pre-Inspection by requiring the public agency to provide documentation to verify that all requirements of the Carl Moyer Program regarding eligibility of existing equipment/vehicles/engines are met.
- B. A Post-Inspection shall be conducted by the AQMD after receipt of a final invoice from the CONTRACTOR. Final payment will not be made until the AQMD verifies that: the engine(s) and equipment listed in the Contract has/have been installed; that the engine is operational in the equipment or vehicle as stated in the Contract; and, where applicable, that the baseline engine(s)

or vehicle(s) has/have been destroyed and rendered useless and there is no evidence of cannibalization of parts from the old engine(s). For fleets owned or operated by public agencies, AQMD may conduct the Post-Inspection through a statistically significant random sample of the vehicles, where the project under this Contract consists of more than 20 vehicles.

16. AUDIT RIGHTS - AQMD, CARB or a third party designee shall have the right to conduct a fiscal audit of the project during the life of the project.
17. MONITORING AND ENFORCEMENT OF CONTRACTS TERMS - CONTRACTOR agrees that AQMD and CARB have the authority to enforce the terms of this Contract at any time during the project life to ensure that emission reductions under this Contract are obtained. AQMD and CARB will seek whatever legal, equitable and other remedies are available under State Law for the CONTRACTOR's failure to comply with the terms of this Contract or with the Carl Moyer Program requirements incorporated herein.
18. RECORDS AND RECORDS RETENTION – CONTRACTOR shall maintain records related to this project and retain these records for at least three years after expiration of the term of the Contract.
19. REPORTING REQUIREMENTS - CONTRACTOR shall submit reports in accordance with Attachments 1, 1A and 1B. Non-compliance with the reporting requirements of this Contract shall result in the implementation of on-site monitoring by the AQMD.
20. SUCCESSORS-IN-INTEREST – This Contract shall be binding on and inure to the benefit of each party's heirs, executors, administrators, successors, and assigns. CONTRACTOR shall provide AQMD with timely notification of any event resulting in a change in the ownership of the vehicles and/or equipment funded under this Contract.
21. PROJECT USAGE – If the project usage reported in the annual report is thirty (30) percent below the usage specified in Attachment 1 – Statement of Work, the AQMD shall flag the project. Any project that has been flagged for performance shall be evaluated over a multiyear basis. If the project's usage does not average out to within 30 percent of the usage specified in Attachment 1 over at least a three-year period, the AQMD shall take appropriate action to ensure the contracted emissions reductions are realized. Appropriate actions include, but are not limited to, recapturing funds from the project in proportion to the loss in emissions reductions or extending the project life.
22. SOON PROGRAM DISCLOSURE STATEMENT - CONTRACTOR hereby certifies that upon execution of this Contract for the herein described SOON Program project, CONTRACTOR shall not submit another application or execute another Contract for the same specific engine(s) with any other source of funds, including but not limited to, AQMD's and other districts' Carl Moyer Program or to the California Air Resources Board (CARB) for a multi-district solicitation. CONTRACTOR acknowledges that violation of this certification shall, at a minimum, result in CONTRACTOR being disqualified from receiving funding for that engine(s) from all sources and may result in CONTRACTOR being banned from submitting future applications to any and all Carl Moyer Program or SOON program solicitations. In addition, as a violation of law, including but not limited to the Business and Professions Code, CARB

and the districts may levy fines and/or seek criminal charges. CONTRACTOR to initial here acknowledging compliance _____.

23. PAYMENT

- A. AQMD shall reimburse CONTRACTOR an amount not to exceed *** Dollars (\$***) as provided in Attachment 2, Payment Schedule, to this Contract. CONTRACTOR shall be entitled to such reimbursement for purchase of the vehicles, engines and/or equipment specified in Attachment 1 - SOW. Payment shall be based upon invoices for the actual cost of the new engine(s), engine retrofit(s) or engine re-power(s) and successful completion of a post inspection by AQMD. Payment of the above amount shall be made directly to the engine dealer or distributor upon submission of an itemized invoice from the CONTRACTOR requesting that such direct payment be made.
- B. The withhold amount shall be in accordance with Attachment 2 – Payment Schedule.
- C. Reimbursement under this Contract shall occur within thirty (30) business days upon submission of an itemized invoice from the engine supplier for re-powers or paid invoices for new vehicles and completion of the post-inspection audit required under Clause 15. Invoices must itemize all charges for equipment, materials, supplies, subcontractors and other charges, as applicable. Reimbursement for equipment, materials, supplies, subcontractors and other charges will be made at actual cost. Supporting documentation and proof of payment must be provided for all individual charges (with the exception of direct labor charges provided by the CONTRACTOR). Each invoice must be prepared in duplicate, on company letterhead, and list AQMD's Contract number, period covered by invoice, and CONTRACTOR's Social Security Number or Employer Identification Number and submitted to: South Coast Air Quality Management District, Attn: Carl Moyer Contract Administrator, Technology Advancement, 21865 Copley Drive, Diamond Bar, CA 91765-4178.
- D. Funding for this Contract is contingent upon receipt of funds from the California Air Resources Board (CARB).
- E. Any funds not expended as contracted for or committed during the term of the Contract, as described in Attachment 1 - Statement of Work must be returned to AQMD. CONTRACTOR agrees that it is not entitled to the remaining funds and that AQMD will de-obligate the Contract of the balance of funds after the final invoice has been paid. CONTRACTOR shall include the notation "Final Invoice" upon its submittal to AQMD. CONTRACTOR to initial here acknowledging consent to de-obligation of non-expended funding. _____

24. AQMD LIEN RIGHTS - CONTRACTOR agrees AQMD shall have lien rights on any and all equipment and/or vehicles purchased in whole or in part by the CONTRACTOR, under this Contract or any amendments thereto. The AQMD shall have lien rights in effect until the CONTRACTOR satisfies all terms under the Contract, including but not limited to, the use and reporting requirements. **Accordingly, CONTRACTOR further agrees that AQMD is authorized to file a UCC filing statement to secure its interests in the equipment and/or vehicles that are the subject of the Contract.** In the event CONTRACTOR files for bankruptcy protection, CONTRACTOR shall notify AQMD within 10 business days of such filing.

25. MOBILE SOURCE EMISSION REDUCTION CREDITS (MSERCs) - No MSERCs resulting from SOON Program funded projects may be generated and/or sold. All validated emission reductions shall be applied toward the State Implementation Plan (SIP) attainment demonstration. All emission reductions, created as a result, in whole or in part, from the expenditure of Carl Moyer funds shall not be converted

into tradable credits, and shall be used for the sole purpose of meeting the attainment schedule contained in the applicable SIP.

26. INTELLECTUAL PROPERTY RIGHTS - Title and full ownership rights to any intellectual property developed under this Contract shall at all time remain with AQMD. Such material is agreed to be AQMD's proprietary information.
- A. Rights of Technical Data - AQMD shall have the unlimited right to use technical data, including material designated as a trade secret, resulting from the performance of services by CONTRACTOR under this Contract. CONTRACTOR shall have the right to use data for its own benefit.
 - B. Copyright - CONTRACTOR agrees to grant AQMD a royalty free, nonexclusive, irrevocable license to produce, translate, publish, use, and dispose of all copyrightable material first produced or composed in the performance of this Contract.
27. NOTICES - Any notices from either party to the other shall be given in writing to the attention of the persons listed below, or to other such addresses or addressees as may hereafter be designated in writing for notices by either party to the other. Notice shall be given by certified, express, or registered mail, return receipt requested, and shall be effective as of the date of receipt indicated on the return receipt card.

AQMD: South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178
Attn: Carl Moyer Contract Administrator, Technology Advancement

CONTRACTOR: ***

Attn: ***

28. EMPLOYEES OF CONTRACTOR
- A. CONTRACTOR shall be responsible for the cost of regular pay to its employees, as well as cost of vacation, vacation replacements, sick leave, severance pay and pay for legal holidays.
 - B. CONTRACTOR, its officers, employees, agents, representatives or subcontractors shall in no sense be considered employees or agents of AQMD, nor shall CONTRACTOR, its officers, employees, agents, representatives or subcontractors be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by AQMD to its employees.
 - C. AQMD requires CONTRACTOR to be in compliance with all state and federal laws and regulations with respect to CONTRACTOR's employees throughout the term of this Contract, including state minimum wage laws and OSHA requirements.
29. PUBLICATION
- A. AQMD shall have the right of prior written approval of any document which shall be disseminated to the public by CONTRACTOR in which CONTRACTOR utilized information obtained from AQMD in connection with performance under this Contract.

- B. Information, data, documents, photographs or reports developed by CONTRACTOR for AQMD, pursuant to this Contract, shall be part of AQMD'S public record unless otherwise indicated. CONTRACTOR may use or publish, at its own expense, such information provided to AQMD. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.
- i. "This report was prepared as a result of work sponsored, paid for, in whole or in part, by the South Coast Air Quality Management AQMD (AQMD). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of AQMD. AQMD, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report. AQMD has not approved or disapproved this report, nor has AQMD passed upon the accuracy or adequacy of the information contained herein."
- C. CONTRACTOR shall inform its officers, employees, and subcontractors involved in the performance of this Contract of the restrictions contained herein and require compliance with the above.
30. NON-DISCRIMINATION - In the performance of this Contract, CONTRACTOR shall not discriminate in recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order. CONTRACTOR shall likewise require each subcontractor to comply with this Clause and shall include in each such subcontract language similar to this Clause.
31. ASSIGNMENT - The rights granted hereby may not be assigned, sold, licensed, or otherwise transferred by either party without the prior written consent of the other, and any attempt by either party to do so shall be void upon inception.
32. NON-EFFECT OF WAIVER - The failure of CONTRACTOR or AQMD to insist upon the performance of any or all of the terms, covenants, or conditions of this Contract, or failure to exercise any rights or remedies hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, or conditions, or of the future exercise of such rights or remedies, unless otherwise provided for herein.
33. ATTORNEYS' FEES - In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys' fees and costs.
34. FORCE MAJEURE - Neither AQMD nor CONTRACTOR shall be liable or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of AQMD or CONTRACTOR.

35. SEVERABILITY - In the event that any one or more of the provisions contained in this Contract shall for any reason be held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any other provisions of this Contract, and the Contract shall then be construed as if such unenforceable provisions are not a part hereof.
36. HEADINGS - Headings on the Clauses of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.
37. DUPLICATE EXECUTION - This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.
38. GOVERNING LAW - This Contract shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California. Venue for resolution of any disputes under this Contract shall be Los Angeles County, California.
39. CITIZENSHIP AND ALIEN STATUS
- A. CONTRACTOR warrants that it fully complies with all laws regarding the employment of aliens and others, and that its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). CONTRACTOR shall obtain from all covered employees performing services hereunder all verification and other documentation of employees' eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. CONTRACTOR shall have a continuing obligation to verify and document the continuing employment authorization and authorized alien status of employees performing services under this Contract to insure continued compliance with all federal statutes and regulations.
 - B. Notwithstanding Clause A above, CONTRACTOR, in the performance of this Contract, shall not discriminate against any person in violation of 8 USC Section 1324b.
 - C. CONTRACTOR shall retain such documentation for all covered employees for the period described by law. CONTRACTOR shall indemnify, defend, and hold harmless AQMD, its officers and employees from employer sanctions and other liability which may be assessed against CONTRACTOR or AQMD, or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Contract.
40. APPROVAL OF SUBCONTRACTS
- A. If CONTRACTOR intends to subcontract a portion of the work under this Contract, written approval of the terms of the proposed subcontract(s) shall be obtained from AQMD'S Executive Officer or designee prior to execution of the subcontract. No subcontract charges will be reimbursed unless such approval has been obtained.
 - B. Any material changes to the subcontract(s) that affect the scope of work, deliverable schedule, and/or cost schedule shall also require the written approval of the Executive Officer or designee prior to execution.

- C. The sole purpose of AQMD'S review is to insure that AQMD'S contract rights have not been diminished in the subcontractor agreement. AQMD shall not supervise, direct, or have control over, or be responsible for, subcontractor's means, methods, techniques, work sequences or procedures or for the safety precautions and programs incident thereto, or for any failure of subcontractor to comply with any local, state, or federal laws, or rules or regulations.
41. TAX IMPLICATIONS FROM RECEIPT OF CARL MOYER PROGRAM FUNDS – CONTRACTOR is advised to consult a tax attorney regarding potential tax implications from receipt of funds under the Carl Moyer Program.
42. ENTIRE CONTRACT - This Contract represents the entire agreement between the parties hereto related to CONTRACTOR and AQMD. By executing this Contract, CONTRACTOR understands and agrees to operate the engine, vehicle, or equipment according to the terms of the Contract and to cooperate with the AQMD and CARB implementation, monitoring, enforcement and other efforts to assure the emissions benefits are real, quantifiable, surplus and enforceable. There are no understandings, representations, or warranties of any kind except as expressly set forth herein. No waiver, alteration, or modification of any of the provisions herein shall be binding on any party unless in writing and signed by the party against whom enforcement of such waiver, alteration, or modification is sought.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT ***

By: _____
Dr. William A. Burke, Chairman, Governing Board

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

ATTEST:
Saundra McDaniel, Clerk of the Board

By: _____

APPROVED AS TO FORM:
Kurt R. Wiese, General Counsel

By: _____

//SOON Off-Road
4 August 2010